CESWG-RD-CC
Application: SWG-2014-00559

MEMORANDUM FOR THE RECORD

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the Above – Numbered Permit Application

This document constitutes the Environmental Assessment, Public Interest Review, and Statement of Findings for the subject application.

1. Applicant.

APPLICANT: The Texas Fuel and Asphalt Co., LLC
P.O. Box 9605
Corpus Christi, Texas 78469-9605
Telephone: 361-882-8870
POC: Kent Osborn

AGENT: PEC Corporation
P.O. Box 230710
Houston, Texas 77223-0710
Telephone: 713-921-4583
POC: D.V. (Sonny) Flores

LATITUDE & LONGITUDE (NAD 83):
Latitude: 27.81592 North; Longitude: 97.46663 West

2. Corps Authority. The U.S. Army Corps of Engineers, Galveston District (Corps) will evaluate the proposed activity under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403).

3. Project and Site Description. The applicant proposes to construct four breasting dolphins and two shore anchors with a connecting walkway/pipeway for the on-loading and off-loading of petroleum products from barges. The applicant states that no impacts will occur to the approximately 0.13 acres of tidal fringe wetlands and intertidal sand flats found along the property's shoreline.

The proposed project would involve the dredging of a 7.09 acre area of open water within Tule Lake Channel to a depth of -25 feet MLT. The dredging profile would consist of a gradual slope (3:1) from the top to the toe of the slope. The proposed dredging activity would hydraulically and mechanically remove a total of approximately 181,000 cubic yards of material. The applicant is proposing to place the dredged material into one of the following Dredge Material Placement Areas (DMPA):

1. Tule Lake DMPA – Cells A, B & C
2. Suntide DMPA
3. South Shore DMPA – Cells A, B & C
4. DMPA No. 1
5. DMPA No. 4
6. DMPA No. 5
7. Herbie Mauer DMPA

The project is located on the south side of the Tule Lake Channel, approximately 0.83 miles WNW of the former Tule Lift Bridge site, Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: CORPUS CHRISTI, Texas.

Avoidance and Minimization Information: The applicant has stated that they have avoided and minimized the environmental impacts by planning to dredge the minimum amount necessary to safely conduct loading and offloading operations of liquid products from barges. The project site consists of an approximately 900 foot long portion of the south shore of the Tule Lake Channel, located between the former Encycle facility and the Port Authority Grain Terminal. The shelf of terrain immediately above the shoreline is vegetated primarily with retama (*Parkinsonia aculeata*) and huisache (*Acacia farnesiana*). A review of the property indicated approximately 0.09 acres of intertidal sand flat and 0.04 acres of wetlands present along the western portion of the shoreline, consisting primarily of smooth cordgrass (*Spartina alterniflora*), salt hay grass (*Spartina patens*) and sea ox-eye daisy (*Borrichia frutescens*). The applicant states that all of these special aquatic sites are to be avoided. The project also includes approximately 7.09 acres of open water within the Tule Lake Channel.

Compensatory Mitigation: - No mitigation plan is considered for this project.

4. Purpose and Need.

Applicant's Stated Purpose and Need: The facility will be used to store liquid products and provide water transportation for such products.

Basic Project Purpose and Water Dependency Determination

The basic purpose of the project is to construct barge loading facilities for marine transportation of bulk petroleum products. The project is water dependent due to the need to load barges.

Overall Project Purpose

The overall purpose of the project is to construct barge loading facilities for marine transportation of bulk petroleum products in the Corpus Christi Inner Harbor.

5. Existing Conditions. The project is located on the south side of the Tule Lake Channel, approximately 0.83 miles WNW of the former Tule Lift Bridge site, Corpus Christi, Nueces County, Texas. The 23.45-acre tract is surrounded to the north by the Tule Lake Channel, to the south by Up River Road, to the east by the proposed Plains Marketing, LP ship loading facility, and to the west by the Interstate Grain Corporation grain storage and loading facility. The 23.45-acre project site was determined to contain 7.22 acres of aquatic resources, specifically 7.09 acres of open unvegetated tidal waters, subject to the ebb and flow of the tide, 0.04 acre of tidal fringe wetlands and 0.09 acre of intertidal sand flats found along the property's shoreline, per a preliminary jurisdictional determination. The wetlands can be classified as estuarine intertidal emergent marsh and are dominated by smooth cordgrass (*Spartina alterniflora*), salt hay grass (*Spartina patens*) and sea ox-eye daisy (*Borrichia frutescens*).

6. Background. On 2 July 2014 we received a permit request for construction of this project. On 7 July 2014 we notified the applicant that their standard permit application was incomplete and received an updated application on 6 August 2014, with a public notice issued by the Corps on 9 September 2014.

7. Scope of Analysis.

a. NEPA: The determination of what is the appropriate Scope of Analysis governing the Corps' permit review and decision is guided by the Corps' National Environmental Policy Act (NEPA) regulations for the regulatory program: 33 CFR Part 325, Appendix B. The Scope of Analysis should be limited to the specific activity requiring a Department of the Army (DA) permit and any additional portions of the entire project over which there is sufficient Federal control and responsibility to warrant NEPA review. Appendix B states that factors to consider in determining whether sufficient "control and responsibility" exist include: 1) whether or not the regulated activity comprises "merely a link" in a corridor type project; 2) whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity; 3) the extent to which the entire project will be within Corps jurisdiction; and 4) the extent of cumulative Federal control and responsibility. Generally, the Corps' area of responsibility includes all waters of the U.S. as well as any additional areas of non-jurisdictional waters or uplands where the district determines there is adequate Federal control and responsibility to justify including those areas

within the Corps' NEPA scope of analysis. This normally includes upland areas in the immediate vicinity of the waters of the U.S. where the regulated activity occurs (Standard Operating Procedures for the U.S. Army Corps of Engineers Regulatory Program – July 2009).

(1) Factors.

(i) With regard to the first factor that must be considered in the determination of sufficient Federal control and responsibility, the regulated activities associated with this hydraulic dredging and cargo dock construction proposal do not comprise a link in a corridor type of project.

(ii) With regard to the second factor, the design of upland portions of the hydraulic dredging and cargo dock construction proposal occurring in the immediate vicinity of the regulated activities do not affect the location and configuration of the regulated activities. The overall project includes construction of storage tanks and appurtenances used for the overall handling and storage of petroleum products which will be loaded onto marine vessels, however the specific position of these facilities on the upland portion of the property will have no affect on the portion of the project proposed to be conducted within jurisdictional waters.

(iii) With regard to the third factor, the extent to which the entire project will be within Corps jurisdiction, the proposed hydraulic dredging and cargo dock construction proposal will be entirely within jurisdictional waters. The focus on this permit is limited to the proposed hydraulic dredging and the construction of the cargo dock. Both of these activities are completely within Section 10 waters of the Tule Lake Channel. The entire project is within the Corps' jurisdiction; thus this project does meet the third factor.

(iv) With regard to the fourth factor that must be considered in the determination of sufficient Federal control and responsibility, during our consideration of the extent of cumulative Federal control and responsibility for this project, we appropriately relied on and fully considered, information and reports from Federal agencies pursuant to their responsibilities under the Fish and Wildlife Coordination Act, the Endangered Species Act (ESA), and Essential Fish Habitat (EFH) regulations (National Marine Fisheries Service – NMFS). ESA threatened or endangered species consultation with the FWS and NMFS was required for this permit action. The FWS provided comments regarding ESA which are discussed in detail, in the Public Interest factors. NMFS provided comments stating that they anticipate that any adverse effects that might occur on marine and anadromous fishery resources would be minimal; therefore, NMFS does not object to the issuance of the permit. Therefore, EFH

consultation was successfully completed with the NMFS. Our staff archeologist reviewed the project site and determined that there are no properties listed in the National Register of Historic Places for the permit area. The State Historical Preservation Officer concurred with the staff archeologist determination on 26 September 2014. No further coordination was required pursuant to our responsibilities under 33 CFR Part 325, Appendix C.

We also relied on information from state and local entities with land use planning authority who are responsible for approving development in the area in question; specifically, the City of Corpus Christi and the Texas General Land Office. The project has received its Section 401 Clean Water Act water quality certification from the TCEQ for the return water from the DMPA. The Corps will issue a NWP 16 authorizing that discharge. The Corps has received a state coastal zone consistency approval under the Coastal Zone Management Act. No other approvals were denied by Federal and state land use planning authorities.

(2) Determined Scope. In conclusion, based on our examination of NEPA (33 CFR Part 325, Appendix B) and applicable program guidance (e.g. CEQ's Considering Cumulative Effects Under the National Environmental Policy Act and the Standard Operating Procedures for the U.S. Army Corps of Engineers Regulatory Program – July 2009), we have determined that the appropriate scope for this project is only within the footprint of the delineated water and the DMPA.

This project does not meet factors one, two and four. However, it does meet factor three, in that the proposed hydraulic dredging and cargo dock construction proposal will be entirely within jurisdictional waters. Sufficient Federal control and responsibility does exist to warrant expanding our review to areas outside our jurisdiction, inclusive of those areas adjacent to project features that require DA permit authorization, specifically the DMPAs. Our Scope of Analysis will not include the direct impacts to uplands resulting from hydraulic dredging, as there are not any. All material to be hydraulically dredged will be placed within an authorized DMPA upon approval by the entity controlling that asset. Any direct impacts to uplands resulting from cargo dock construction are considered outside the scope of this assessment due to the variable placement of such facilities and appurtenances with respect to the loading dock. In brief, there is no immediate requirement for the petroleum storage tanks and associated infrastructure to be located in a way as to affect jurisdictional waters.

b. National Historic Properties Act (NHPA) "Permit Area". The determination of what is the appropriate Scope of Analysis governing the Corps' permit review and decision is guided by the Corps' NHPA regulations for the regulatory program: 33 CFR Part 325, Appendix C.

(1) Tests. Activities outside waters of the United States are not included because of all of the following tests are satisfied: Such activity would not occur but for the authorization of the work or structures within the waters of the United States; Such activity is not integrally related to the work or structures to be authorized within waters of the United States (or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program); and such activity is not directly associated (first order impact) with the work or structures to be authorized.

(2) Determined Scope. We have determined that the appropriate scope for this project is within the delineated water and the DMPA.

c. Endangered Species Act (ESA) "Action Area." The determination of what is the appropriate Scope of Analysis governing the Corps' permit review and decision is guided by the Endangered Species Act of 1973.

(1) Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

(2) Determined Scope. We have determined that the appropriate ESA action area for this project is within the delineated water and DMPA. Our ESA review will not include the direct impacts to uplands resulting from hydraulic and mechanical dredging, as all material to be dredged will be placed within an authorized DMPA upon approval by the entity controlling those assets. Any direct impacts to uplands resulting from storage tank construction are considered outside the scope of this assessment due to the variable placement of such facilities and appurtenances with respect to the barge dock. In brief, there is no immediate requirement for the petroleum storage tanks and associated infrastructure to be located in a way as to affect jurisdictional waters.

8. Environmental Assessment.

a. Alternatives. There are no unresolved conflicts concerning alternatives.

b. Environmental Setting. The Nueces-Corpus Christi Bay system is one of the seven major estuarine systems in the State of Texas. The largest bay in this system is Corpus Christi Bay at 95,997 acres, Nueces Bay is next largest at 19,518 acres, Oso Bay covers 17,095 acres, and Redfish Bay is the smallest bay in this system at 5,258 acres. Freshwater inflow, which strongly influences estuarine productivity, enters into the Corpus Christi Bay system from the Nueces River and Oso Creek. Corpus Christi Bay is the deepest of these four bays, with an average depth of 11 feet. The three other bays average about two to three feet in depth. The Tule Lake Channel is a dominant

feature north of the project site and is an extension of the Corpus Christi Ship Channel (CCSC), a 45-foot deep shipping channel approximately 32 miles long that crosses Corpus Christi Bay to connect the Gulf of Mexico. The CCSC enters from the Gulf of Mexico through two rubble stone jetties at Port Aransas, traverses Corpus Christi Bay and is the largest navigation channel located in Corpus Christi Bay. It enhances the exchange of water between both Corpus Christi Bay and Aransas Bay (via the Lydia Ann Channel) and the Gulf of Mexico through tidal currents. The project area is the inner harbor of the CCSC which is was dredged in 1934 to Avery Point, and then extended three years later to Tule Lake. In 1958 the CCSC was extended (Viola Channel) to the Viola Turning Basin at the Suntide Refining Company. Areas proposed for dredging by this project have already been significantly altered and there are virtually no opportunities for the establishment of seagrasses or oysters due to water depths. The CCSC banks are typically bulkheaded or moderately steep with eroded bank materials at the base. Inner harbor channel depths are maintained at minus 45 feet and channel widths 300 to 400 feet wide, not including the wider turning basins. There are numerous confined placement areas on both sides of the channel, but mostly on the north side. Most of the docks and industrial users are on the south side of the channel, except near the harbor entrance where several oil docks are located and west of the former Tule Lake Bridge where three bulk material docks are located on the north side of the channel. The Corpus Christi Rincon Canal System is composed of several connecting channels constructed between 1967 and 1974. The main canal is a channel measuring 100 feet in width, 12 feet in depth, and 14,256 feet in length, and connects the CCSC to the Rincon Industrial Park.

c. Environmental Impacts. The possible consequences of this proposed work were studied for environmental concerns, social well-being, and the public interest, in accordance with regulations published in 33 C.F.R. 320-332. All factors, which may be relevant to the proposal, must be considered. The following factors were determined to be particularly relevant to this application and were evaluated appropriately, as they relate to the project.

(1) Historic and Cultural Resources. The National Register of Historic Places has been consulted and no properties are listed in the permit area. In addition, the permit area has been so extensively modified that the proposed project has no potential to affect a Historic Property. The State Historical Preservation Officer (SHPO) concurred with the staff archeologist determination on 26 September 2014.

(2) Water Quality. The proposed hydraulic dredging and loading dock construction will temporarily impact benthic organisms. However, once these dredging and construction activities are completed, these organisms will quickly reestablish. Stormwater runoff from construction sites will result in a minimal adverse impact to

surface water quality, so long as best management practices are implemented. No lasting water pollution will occur.

(3) Endangered Species. Informal consultation for Threatened and Endangered Species was initiated with the US Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) on 9 September 2014 (public notice).

FWS Consultation Summary
(From electronic correspondence dated 6 October 2014): The FWS has reviewed, and has No Objection to the authorization of Public Notice, dated September 9, 2014, for Department of the Army, U.S. Army Corps of Engineers (USACE), Permit Application SWG-2014-00559. Also, the permit application indicates you have determined that the proposed action would have no effect on federally listed species or critical habitat. In Texas, strandings and sightings of the West Indian manatee (*Trichechus manatus*) have been documented from Galveston County to Cameron County. For coastal construction projects, FWS recommends that project construction and operations employees will (a) be advised that manatees may approach the proposed project area (b) be provided materials, such as a poster, to assist in identifying the mammal, (c) be instructed not to feed or water the animal, and (d) be provided the appropriate contact numbers for FWS in case a manatee is sighted.

(4) Fish and Wildlife Values. The proposed project will temporarily impact 7.09 acres of aquatic habitat located within the Tule Lake Channel at the project site from construction, and hydraulic and mechanical dredging activities. However, once these dredging and construction activities are completed, the area will again be available for habitat use. No lasting impacts will occur.

(5) Essential Fish Habitat (EFH). 7.09 acres of temporary impacts to EFH will occur as a result of construction and dredging activities by the proposed project. However, we have determined, through our coordination with the National Marine Fisheries Service, that the adverse effects to EFH are minimal.

(6) Wetlands/Special Aquatic Sites. The proposed project has been designed to avoid approximately 0.09 acres of intertidal sand flat and 0.04 acres of wetlands present along the western portion of the shoreline. Due to this avoidance measure by the applicant, no impacts to these resources are expected to occur.

(7) Shoreline Erosion and Accretion. Best management practices will be implemented during the construction of the barge dock. Additionally, the proposed dredging footprint will be set far enough away from the current shoreline to allow for the new slope to avoid direct impacts to wetland and sand flat habitat currently found there.

Only minimal shoreline erosion and accretion is anticipated from the project.

(8) Recreation. The project site is located in a highly industrialized area along an industrial waterway, as such, recreation is minimal.

(9) Aesthetics. The project is similar to other projects in the surrounding area. The surrounding area is the Corpus Christi Inner Harbor, which is a highly industrialized area. The proposed work will have a temporary minimal adverse impact upon the aesthetic value of the site caused by the presence of construction equipment and machinery. However, the construction methodology will be similar to that used during the construction of other facilities in the area. There will be no more than minimal affect on the aesthetics of the area.

(10) Land Use. There are no known land use classifications or coastal zone management plans that would adversely affect the project. The land use in the project area is industrial and undeveloped.

(11) Navigation. Navigation occurring in the area will not be adversely affected by this project as most of the construction and dredging activity occurs out of the main channel. The exception is dredging the area which will tie the proposed barge berth at the near edge of the federal channel.

(12) Federal Projects. The project is located along a Federal Navigation/Flood Control Project and has been coordinated with the Operations Division/Navigation Branch/Programs and Project Management Division/Real Estate Division. An internal review was conducted for the project on 22 August 2014, which covered construction of four breasting dolphins and two shore anchors with a connecting walkway/pipeway for the on-loading and offloading of petroleum products from barges, the dredging of a 7.09 acre area of open water within Tule Lake Channel to a depth of -25 feet MLT, and placement of dredged material in one of seven listed DMPAs.

During the review the Real Estate Division commented that: "Initial review of this request indicates USACE real estate interests may be affected. A realty specialist will need to determine what, if any, additional real estate actions are needed for this IR. Permits may be issued subject to RE clearance with the following statement:

> This permit does not authorize any injury or interference with any Federal property; nor does it grant property rights, access privileges, or rights-of-way entrance authorizations to any property including those owned by State or Federal agencies. There are Federal properties (owned OR CONTROLLED by Corps of Engineers) identified within the project area. All appropriate accesses, authorizations, rights-of-

way on the Corps Federal project area must be procured from the Corps Real Estate Division prior to impacting any of these Federally-owned/operated lands. This Permit authorization is limited to those impacts exactly as depicted. If property access and/or use is denied and/or requires modification to the project as permitted, this authorization becomes null and void and would require a new authorization to adequately address these new impacts. Please visit the USACE Galveston District's website for the most current information regarding the District's outgrant policy at http://www.swg.usace.army.mil/BusinessWithUs/RealEstateDivision/Outgrants.aspx.

The statement listed above will be added to the text of the final letter.

(13) Conservation. The proposed project has been designed to avoid approximately 0.09 acres of intertidal sand flat and 0.04 acres of wetlands present along the western portion of the shoreline. Due to this avoidance measure by the applicant, no impacts to these resources are expected to occur.

(14) Floodplain Values. Portions of the project site are located within the mapped 100-year floodplain of the Nueces River. Floodplains possess natural values and carry out numerous functions important to the public interest. These include: natural moderation of floods, water quality maintenance, groundwater recharge, fish/wildlife/plant resources, open space, natural beauty, scientific study, and recreation. Although the project site is partially located within the 100-year floodplain of the Nueces River, its highly altered state (not natural) has an effect on the functions it performs. The project area serves to hold storm water after high rainfall events, which allows for the settling of pollutants. It contains fish/wildlife/plant resources and open space, but due to the highly altered state of the site and its proximity to industrial facilities, these benefits are minimal. The floodplain values that would be lost at the project will be minimal.

(15) Safety. Appropriate signage and lighting may be required by the Coast Guard and/or harbor master. The permittee will be responsible to install and maintain those devices as directed by the appropriate jurisdictional authorities.

(16) Energy Needs. Pursuant to Executive Order 13212 to expedite energy related projects, the project being proposed will help expedite the increased supply and availability of energy to our nation.

(17) Floodplain Hazards. No flood storage capacity will be removed from the 100-year floodplain of the Nueces River as a result of the project (FEMA FIRM Panel 4854940304C published on 18 Mar 85). The only portion of the project site within the floodplain will be the barge dock, a structure which will allow for the free movement of

storm water beneath it. The project is not anticipated to adversely affect floodplain values.

(18) Economics. This project will positively impact the economics of the State of Texas and the nation. The added ability to load and transport petroleum products will benefit the state and nation by the receipt of tax revenue from the sale of product as well as shipping fees. Furthermore, the facility will create additional local jobs that will benefit the local, state and national economy.

(19) Water Supply and Conservation. The project will have no effect on water supply and conservation.

(20) Air Pollution. The project is exempt because it is located within Nueces County, a county that is in attainment for all listed pollutants; furthermore, the construction of the project would not create a situation where air pollution would exceed the de minimis level. The project would not have more than a minimal adverse effect on air quality.

(21) Food and Fiber Production. The project is not one that affects food and fiber production, as the project site has not, in recent history, contributed to food and fiber production. The project would not have an effect on food and fiber production.

(22) Mineral Needs. The project is not one that affects mineral needs, as the project site has not, in recent history, contributed to mineral needs. The project would not have an effect on mineral needs.

(23) Other Federal, State, or Local Requirements. All required Federal, State, and/or local authorization or certifications necessary to complete processing of this application have been obtained except for coastal zone consistency certification.

The applicant has stated that the proposed activity complies with Texas' approved Coastal Management Program (CMP) and will be conducted in a manner consistent with such program. The Texas Coastal Coordination Council / Texas General Land Office submitted a letter, dated 22 December 2014, stating that it has been determined that there are no significant unresolved consistency issues with respect to the project, therefore the project is consistent with the CMP goals and policies.

We have determined that the conditioned Section 401 certification, placed upon NWP 16 by TCEQ, is not reasonably implementable or enforceable, according to 33 CFR 325.4(c). Therefore, individual Section 401water quality certification from TCEQ is required. The permittee obtained a Section 401 water quality certification from the

TCEQ for the effluent or return water associated with the upland dredged material placement area to be utilized and provided a copy of the Section 401 certification to the Corps of Engineers (CE), Galveston District, Corpus Christi Regulatory Field Office, dated 29 September 2014.

(24) Other Factors Considered. All of the 22 factors were considered during the evaluation process.

d. Cumulative & Secondary Impacts. An assessment of cumulative impacts takes into consideration the consequences that past, present, and reasonably foreseeable future projects had, have, or will have on an ecosystem. Every permit application must be considered on its own merits. Its impacts on the environment must be assessed in light of historical permitting activity, along with anticipated future activities in the area. Although a particular project may constitute a minor impact in itself, the cumulative impacts that result from a large number of such projects could cause a significant impairment of water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

Cumulative impacts can result from many different activities including the addition of materials to the environment from multiple sources, repeated removal of materials or organisms from the environment, and repeated environmental changes over large areas and long periods. More complicated cumulative effects occur when stresses of different types combine to produce a single effect or suite of effects. Large, contiguous habitats can be fragmented, making it difficult for organisms to locate and maintain populations between disjunctive habitat fragments. Cumulative impacts may also occur when the timings of perturbations are so close in space that their effects overlap.

The area in which impacts resulting from the proposed project will be felt will be confined to the CCSC inner harbor area and surrounding tracts. The impacts that are expected in that area from the proposed project are temporary impacts to benthic populations and temporary turbidity associated with the dredging of the barge slip along the Tule Lake Channel and the construction of four breasting dolphins and two shore anchors with a connecting walkway/pipeway for the on-loading and offloading of petroleum products from barges. The 23.45-acre project site contains 7.22 acres of aquatic resources, specifically 7.09 acres of open unvegetated tidal waters, subject to the ebb and flow of the tide, 0.04 acre of tidal fringe wetlands and 0.09 acre of intertidal sand flats found along the property's shoreline. The 7.09-acre area of open water within Tule Lake Channel will be dredged to a depth of -25 feet MLT, removing a total of approximately 181,000 cubic yards of sand and clay for a barge slip. The proposed project is typical of industrial facilities when compared to other projects constructed in

major industrial port area. Development similar to the proposal has occurred since prior to 1950. Key issues of concern in this watershed are water quality.

The impacts that are expected in that area from the proposed project include dredging approximately 7.09 acres of un-vegetated open waters. Avoidance and minimization methods proposed for this project include: 1) Avoidance of approximately 0.09 acres of intertidal sand flat and 0.04 acres of wetlands present along the western portion of the project shoreline, consisting primarily of smooth cordgrass (*Spartina alterniflora*), salt hay grass (*Spartina patens*) and sea ox-eye daisy (*Borrichia frutescens*); 2) Construction of associated petroleum storage facilities and appurtenances on upland portions of the project site; and 3) Use of Best Management Practices for activities associated with hydraulic and mechanical dredging, and construction of the four breasting dolphins and two shore anchors with a connecting walkway/pipeway for the on-loading and offloading of petroleum products from barges. Avoidance of Special Aquatic Sites and monitoring requirements will result in a no net loss of aquatic resources within this watershed.

Other past actions that have had impacts in the same area are development of commercial marine facilities along the coastline of the POCCA's Inner Harbor and within adjacent tracts. The impacts from these actions are: dredging for navigation access that has resulted in greater open water area and deeper water depths; armoring and backfilling shoreline areas, which has resulted in loss of shallow water coastal habitat and increased reflective wave energy that would tend to scour the shoreline; construction of docking structures along the shoreline that shade the waters beneath them and filling of wetlands for the construction of industrial facilities. Resulting natural resource changes and stresses include an increase of open water area and impervious surface, loss and/or prevention of formation of shallow water habitat, including coastal fringe wetlands, seagrasses, and oyster reefs and loss of palustrine emergent wetland on the adjacent tracts. These resources are also being affected by rising sea level and increased coastal development.

Past or present actions include the:
- Corpus Christi Ship Channel 45-foot Project
- Joe Fulton International Trade Corridor
- Other Actions authorized by USACE Permits

Reasonably foreseeable future actions:
- Corpus Christi Ship Channel Improvement Project (CCSCIP)
- Port of Corpus Christi maintenance dredging projects
- Plains All American Pipeline LP
- CCI Corpus Christi

- Other Pending Corps Permits for Large Dredge or Fill Activities

The following projects were not considered in the evaluation of foreseeable future due to project uncertainty or did not have any documents available. Impacts from these projects were not addressed due to the lack of available information:

- Safeharbor Project
- State of Texas Regional Water Plan for Region L

It is difficult to determine what impacts will occur in the future; however, it is reasonable to assume that the Corps' Regulatory program or another regulatory agency will be involved in the evaluation of future impacts.

Individual Project Evaluation

Specific past, present, and reasonably foreseeable project impacts were evaluated from descriptions, information, and analysis presented in USACE EISs, USACE permits and ORM2/RAMS database, FERC and USCG EISs, other agency documents and project information readily available from on-line sources. No attempt was made to verify or update published documents. In addition, no field data were collected to verify project impacts described in reviewed documents. Mitigation outlined in individual project documents may be in place or proposed. This analysis recognizes that some of the projects assessed are undergoing revisions that may alter their environmental impact. This analysis relied only on existing published documents. If acreage was available, it was summed for each habitat to obtain a cumulative acreage impact. It should be noted that because of the diverse mix of documents that were reviewed for cumulative impacts and because of the fact that not all documents used the same definitions or even the same categories of resources, it was sometimes necessary to lump or modify categories so that the quantities in this section may not be exactly comparable with those presented in the Section d. Environmental Impacts of this EA/SOF. However, every attempt has been made to make this section internally consistent, so that all projects included in Cumulative Impacts are evaluated comparably.

PAST OR PRESENT ACTIONS

Corpus Christi Ship Channel 45-Foot Project

The existing channel extends from deep water in the Gulf of Mexico through a jettied entrance channel in Aransas Pass to Harbor Island and across Corpus Christi Bay to the land-locked channel south of Nueces Bay where this permit action is proposed. A branch channel to La Quinta extending from the main channel along the north shoreline

of Corpus Christi Bay is included in the project. The CCSC is a consolidation of past improvements of Port Aransas and the channel from Aransas Pass to Corpus Christi. The CCSC system also includes La Quinta Channel, Jewell Fulton Channel, and Rincon Canals. In 1968 authorization of major improvements to the CCSC included increasing existing channels and basins to 45-foot depth. The 45-foot project was completed in 1989.

The 45-foot project provides maintenance dredging of the CCSC to authorized dimensions. Maintenance dredging of the federal project channel is required periodically to insure sufficient carrying capacity in the channels for efficient and safe movement of commercial navigation. The outer bar and jetty-channel to Harbor Island are normally maintained by a hopper dredge, with the dredged material placed in a designated open water placement area in the Gulf of Mexico. The remaining portions of the CCSC are maintained by hydraulic pipeline dredge and materials placed in upland confined DMPAs, confined placement areas, and open-water placement areas in Corpus Christi Bay. This proposed permit action in the inner harbor provides for additional dredging of the dock areas that are contiguous with, but outside the federal channel. Construction of the CCSC outside the inner harbor has resulted in a loss of shallow bay bottom habitats and increased salinity through conversion to deep-water navigation channels. Construction of numerous DMPAs has resulted in loss of bay bottom as well. Maintenance dredging the existing project results in temporary increases in turbidity and mortality of benthic organisms during dredging and disposal operations.

Joe Fulton International Trade Corridor (USACE Permit #22534)

The Joe Fulton International Trade Corridor (JFITC) is an intermodal project connecting road, rail and marine traffic between IH 37 and US 181. The proposed project area is located along the Port of Corpus Christi Inner Harbor in Nueces County, Texas, and is located north of the City of Corpus Christi, south of Nueces Bay, and west of Corpus Christi Bay. Construction began in June 2004 and has been completed in 2008. The project features include construction of 11.5 miles of a two-lane roadway and 7.0 miles of railroad corridor approximately, parallel to a portion of the proposed roadway that improves access to over 2,000 acres of land along the north side of the channel for existing and future development. The corridor makes approximately 1,000 acres of land (which has no access) available for use as marine terminals and industrial sites. The project requires placement of fill into 9 acres of unvegetated, hypersaline mudflat and approximately 3 acres of wetlands. The mitigation plan included creation of approximately 6 acres of shallow water habitat comprised of tidal channels, islands, and shallow water flats.

The new rail link provides alternative service to the north bank area, eliminating the need for all rail traffic to pass over the Tule Lake Lift Bridge which was demolished in 2008. The road would provide alternative routing for industrial vehicles between US 181 and IH 37 and POCCA facilities, thus eliminating the need for traffic to traverse the downtown Corpus Christi area and the Harbor Bridge. The route would provide an alternative for general traffic, including hurricane evacuation traffic from areas east of Corpus Christi Bay, independent of the Harbor Bridge.

Other Projects

Summary of Past/Present USACE Permits

An effort was made to document the number of USACE Galveston District permits issued and the number of acres of tidal and non-tidal wetlands authorized to be impacted as well as the number of acres of wetlands to be mitigated. Permits issued authorize various activities such as road construction, oil and gas development, piers, erosion control, marinas, utility lines, and dredge and fill activities associated with residential and commercial developments. Since the early 1990s permit information has been input into the Galveston District RAMS computer database. Prior to that time permit information is only available on microfiche. Starting in the mid 1990s information on acres of wetland impacts and mitigation authorized has been input into the RAMS database. A search of the RAMS database and ORM2 was conducted for permits issued to the POCCA, and those within the CCSC inner harbor. Based on the RAMS search results, 61 permits have been issued for various projects, including dock construction, bulkheads, mooring pilings, new dredging and maintenance dredging. ORM2 listed over 300 aquatic resources and actions within a 5-mile radius of the project site. Because these projects were confined to the inner harbor and established placement areas, apparent impact to wetlands and seagrasses were absent. A significant number of these authorizations were dredging or maintenance dredging.

REASONABLY FORESEEABLE FUTURE ACTIONS

Corpus Christi Ship Channel Improvement Project (CCSCIP)

The Galveston District proposes to deepen the Corpus Christi Ship Channel to improve efficiency and safety of the deep-draft navigation system. The CCSCIP consists of deepening the Corpus Christi Channel to 52 feet; widening the upper and lower bay reaches to 530 feet; adding 200-foot wide, 12-foot deep barge lanes parallel to 9.6 miles of the upper bay portion of the channel; and extending the La Quinta Channel for 1.4 miles at a depth of 39 feet and width of 300 feet. The CCSCIP beneficial uses of dredged material will result in the following: creation of 935 acres of shallow water

habitat, creation of 15 acres of submerged aquatic vegetation (as mitigation), creation of 26 acres of marsh, construction of 26,400 linear feet of rock breakwater, creation of 1,590 acres of offshore topographic relief, construction of 120 acres of upland buffer zone, construction of 7,500 linear feet of rock revetment, protection of 45 acres of submerged aquatic vegetation, protection of an existing bird island, and protection of over 400 acres of wetlands. Channel enlargement will result in direct permanent and temporary losses to 5 acres of patchy submerged aquatic vegetation, which will be mitigated through creation of 15 acres of submerged aquatic vegetation. This project will also involve deepening of the POCCA's inner harbor and adjacent facilities, which will result in additional maintenance dredging and increased material deposited into dredged material placement areas.

Plains Marketing LP
Plains Marketing Pipeline LP proposes to construct an import/export liquid terminal and storage facility that would accommodate AFRAMAX ships (830 feet by 145 feet) and Ocean Going Barges. The terminal would consist of a 165 foot by 16 foot pipe rack and a 215 foot by 20 foot access trestle, a 60 foot by 125 foot loading platform with fendering system, six mooring dolphins and up to five breasting dolphins. The proposed project would involve the dredging of a 16.3-acre area of open water to a depth of -46 ft Mean Low Tide (MLT). The dredging profile would consist of a gradual slope (3:1) to the newly established shoreline. The 3:1 slope would be armored with a revetment mattress consisting of articulating concrete blocks with a fabric underlay. The proposed dredging activity would hydraulically and mechanically remove a total of approximately 553,400 cubic yards of material from an approximately 16.3-acre area to a depth of -46 feet MLT, which would be placed in one of the following Dredge Material Placement Areas (DMPA): Tule Lake DMPA Cells A, B & C, Suntide DMPA, South Shore DMPA Cells A, B & C, DMPA No. 1, DMPA No. 4, DMPA No. 5, or the Herbie Mauer DMPA.

M&G Polymers
M&G Polymers proposes to construct an industrial facility (to be named M&G Polymers) that would produce plastic resins on approximately 204- acres along the Viola Ship Channel in Nueces County. Components of the industrial facility include the plastic resins plant and supporting railways and roadways, desalinization plant with intake and outfall structures, administration buildings, storm water control structures, electric power cogeneration facility (161.8 acres), permanent materials, equipment, and tool storage area (28.2 acres), a paraxylene pipeline connecting the proposed facility to a nearby paraxylene producing facility (13.5 acres), and overhead transmission line towers (0.4 acres). Construction of the project would involve the filling of 42.8 acres of non-forested wetlands within the project site, and dredging of approximately 15,000 cubic yards of sand and clay materials within the Viola Ship Channel for construction of the intake and

outfall structures. The dredged material would be placed within Dredge Material Placement Area C.

CCI Corpus Christi

CCI Corpus Christi proposes to construct an import/export liquid terminal and storage facility that would accommodate ships and ocean-going and inland barges. The terminal would consist of three docks and associated mooring and breasting structures. The project would result in filling of approximately 31 acres of high marsh wetlands for the development of the condensate splitter. An additional 3 acres of emergent wetlands along the shoreline will be filled for the construction of docks.

The project structures will include nine (9) storage tanks 120 feet in diameter and 50 feet high, ten (10) storage tanks 180 feet in diameter and 50 feet high, two (2) tanks 250 feet in diameter and 50 feet high, a flare unit, three package sewage treatment systems (two are 10 feet by 10 feet and one is 15 feet by 30 feet), approximately 2 miles of roadways 30 feet wide, approximately 0.75 miles of dikes 22 feet wide, approximately 1,000 feet of steel pipe rack, three process units 300 feet by 200 feet, a five-bay truck loading area, various buildings (lab, maintenance shop, warehouse, control room) less than 100 feet by 150 feet each, and a cooling water tower.

The proposed project would involve the dredging of a 14.8 acre area of open water to a depth of -46 feet MLT. The dredging profile would consist of a gradual slope (3:1) to the newly established shoreline. Approximately 1,050 linear feet of steel sheet pile bulkhead would be placed landward of ship dock 2 to sustain the 3:1 slope due to the proximity of the existing roadway. The proposed dredging activity would hydraulically and mechanically remove a total of approximately 865,000 cubic yards of material. The applicant is proposing to place the dredged material into one of the following Dredge Material Placement Areas (DMPA): (1) Tule Lake DMPA – Cells A,B & C; (2) Suntide DMPA; (3) South Shore DMPA – Cells A,B & C; (4) DMPA No. 1; (5) DMPA No. 4; (6) DMPA No. 5; and/or (7) Herbie Mauer DMPA.

Future conditions within the study area are expected to be similar to the existing conditions. Projects will include compensatory mitigation to offset impacts to aquatic resources that will maintain the existing conditions. Reasonably foreseeable future actions that could affect these conditions/aquatic resources include construction of industrial developments, dredging, bankline stabilization, mooring facilities, and the expansion and maintenance of infrastructure features (roads, power lines, and oil and gas pipelines). It is likely that development will be focused in previously disturbed sites. Overall, projects with compensatory mitigation will not contribute to a cumulative effect on aquatic functions and values. As development continues it is likely that

compensatory mitigation strategies will evolve to meet the dynamic needs of the system and the availability of the resources

When considering the overall impacts that will result from this project, in relation to the overall impacts from similar past, present, and reasonably foreseeable future projects, their cumulative impacts are not considered to be significantly adverse. Associated compensatory mitigation requirements for projects requiring a DA permit will help offset such losses. It is likely we will receive similar projects in the future, which will go through a comparable review process. Overall, the project will result in minimal environmental impacts and minimal impacts on fish and wildlife values.

9. General Evaluation Criteria Under the Public Interest Review.

a. The relative extent of the public and private need for the proposed work: Public benefits include employment opportunities and a potential increase in the local and state tax base. Private benefits include land use and economic return on the property; for transportation projects, benefits include capacity increase of port facilities and ease of road congestion issues due to conveyance of goods by barge versus over-the-road trucks.

b. The practicability of using reasonable alternative locations and/or methods to accomplish the objective of the proposed structure or work: There are no unresolved conflicts regarding resource use.

c. The extent and permanence of the beneficial and/or detrimental effects, which the proposed work is likely to have on the public and private uses which the area is suited: Detrimental impacts are expected to be minimal by temporary increased turbidity in the construction area. The 7.09 acres of open water to be dredged will be permanently converted to deeper water within the Corpus Christi Inner Harbor.

10. Coordination and Resolution of Comments.

a. Corps Internal Review Concerns. The proposed action was coordinated with Corps offices by Internal Review notice dated 22 August 2014. The Programs and Project Management (PPM) Division, Operations Division-Navigation Branch (OD-N) and Engineering Division (ED) Offices responded to the notice stating that they had no objection to the proposed work.

Real Estate (RE) Division, in an email dated 25 August 2014, stated that initial review of this request indicated USACE real estate interests may be affected, and a realty specialist would need to determine what, if any, additional real estate actions are

needed for this proposed project. The project will be issued with the following statement included:

> This permit does not authorize any injury or interference with any Federal property; nor does it grant property rights, access privileges, or rights-of-way entrance authorizations to any property including those owned by State or Federal agencies. There are Federal properties (owned or controlled by Corps of Engineers) identified within the project area. All appropriate accesses, authorizations, rights-of-way on the Corps Federal project area must be procured from the Corps Real Estate Division prior to impacting any of these Federally-owned/operated lands. This Permit authorization is limited to those impacts exactly as depicted. If property access and/or use is denied and/or requires modification to the project as permitted, this authorization becomes null and void and would require a new authorization to adequately address these new impacts. Please visit the USACE Galveston District's website for the most current information regarding the District's outgrant policy at http://www.swg.usace.army.mil/BusinessWithUs/RealEstateDivision/Outgrants.aspx.

No response was received from any other office.

b. Public Notice Coordination. The formal evaluation process began with publication of a 30-day public notice on 9 September 2014. The comment period for the public notice closed on 9 October 2014. Copies of the public notice were forwarded to concerned Federal, State, and local agencies, organized groups, individuals and navigation districts. These entities included but are not limited to the following:

U.S. Fish and Wildlife Service (FWS)
National Marine Fisheries Service (NMFS)
Environmental Protection Agency (EPA)
U.S. Coast Guard (USCG)
Texas Commission on Environmental Quality (TCEQ)
Texas Parks and Wildlife Department (TPWD)
Texas Historical Commission (THC)
Texas Coastal Coordination Council (CCC)
General Land Office (GLO)
National Ocean Survey, Atlantic Marine Center (NOS)
American Waterways Operators (AWO)
Adjacent Property Owners

c. Response to the Public Notice.

(1) Federal Agencies.

The FWS responded by electronic mail, dated 9 October 2014, stating that:

FWS Comment 1 - The permit application indicates the applicant has determined that the proposed action would have no effect on federally listed species or critical habitat. In Texas, strandings and sightings of the West Indian manatee (*Trichechus manatus*) have been documented from Galveston County to Cameron County. For coastal construction projects, the Service recommends that project construction and operations employees will (a) be advised that manatees may approach the proposed project area (b) be provided materials, such as a poster, to assist in identifying the mammal, (c) be instructed not to feed or water the animal, and (d) be provided the appropriate contact numbers for the Service in case a manatee is sighted.

The NMFS responded by electronic mail, dated 9 October 2014, stating that they anticipate that any adverse effects that might occur on marine and anadromous fishery resources would be minimal; therefore, NMFS does not object to the issuance of the permit. No EFH comments were received.

The EPA responded by letter, dated 9 October 2014, providing the following comments for use in reaching a decision relative to compliance with the EPA's *404(b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material* (40 CFR Part 230):

EPA Comment 1 - Assuming that the proposed dredged material placement areas will discharge effluent, EPA recommends this proposed project be reviewed pursuant to Section 404 of the Clean Water Act, in addition to Section 10 of the Rivers and Harbors Act.

EPA Comment 2 - EPA recommends the applicant explain the purpose of the proposed project, in some detail. Why is the project needed?

EPA Comment 3 - EPA recommends the applicant provide an alternatives analysis.

EPA Comment 4 - EPA recommends the applicant consider beneficial use of the dredged material for habitat restoration/creation, rather than disposal in dredged material placement areas (DMPAs), assuming the dredged material is *suitable material, free from toxic pollutants.*

EPA Comment 5 - Section 230.10(b)(1) prohibits the disposal of dredged material that might violate applicable water quality standards, after consideration of disposal site dilution and dispersion. The CWA regulatory mandate for confined disposal facility (CDF) effluent and runoff discharges is very specific. The discharge of effluent from a CDF is defined as a dredged material discharge in 33 CFR 323.2(d) and 40 CFR 232.2(e). The U.S. Army Corps of Engineers (USACE) has issued a Nationwide Permit (NWP 16) at 33 CFR 330.5 to satisfy the technical requirements for Section 404 permits for return water (e.g. effluent) where the quality of the return water is regulated by States through their Section 401 certification processes. However, USACE has determined that the conditioned Section 401 certification placed upon NWP 16 by the Texas Commission on Environmental Quality (TCEQ) is not reasonably implementable or enforceable, according to 33 CFR 325.4(c). So, USACE has determined that prior to the performance of hydraulic dredging, the applicant must obtain a Section 401 water quality certification from the TCEQ for the effluent or return water discharge. USACE authorizations and evaluations are therefore not required when *uncontaminated* dredged material is placed in a CDF, where the effluent or runoff into waters of the United States is certified as complying with applicable state Section 401 water quality certification requirements. Thus, contaminant testing does not apply to discharges of *uncontaminated* dredged material into CDFs where there is no reason to believe that contaminants might be released into the environment. However, the NWP does not authorize the disposal of contaminated sediments at CDFs where there might be release of contaminants into the environment. The nationwide permit does not relieve permit applicants from ensuring that contaminants are not released into the environment either at the effluent discharge point or from the disposal site proper. In fact, special conditions at 33 CFR 330 require that "any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants." Therefore, contaminant testing does apply in cases where *contaminated* dredged material is proposed for disposal in a CDF, and there is the potential for release of contaminants.

EPA Comment 6 - The Corpus Christi Inner Harbor has a history of elevated concentrations of contaminants in sediments. EPA (1976) documented high concentrations of cadmium and zinc in Corpus Christi Inner Harbor sediments. USFWS (1995) found that sediments from the Corpus Christi Inner Harbor had elevated concentrations of chromium, copper, lead, mercury, and zinc. Nicolau and Nunez (2005) also found elevated concentrations of zinc in sediments of the Corpus Christi Inner Harbor.

EPA Comment 7 - EPA recommends the applicant provide recent data describing the quality of the material proposed to be dredged and disposed. Existing information is acceptable, assuming it is less than five years old, a broad suite of contaminants was measured, and appropriate sample collection and laboratory analytical methods were

used, including appropriate detection limits. Excellent guidance is available to support the collection and interpretation of such data:

- If new sampling and analysis are to be conducted, assuming the dredged material is to be disposed of in DMP As, as proposed, EPA strongly recommends the focus be on elutriate testing of the sediments, using Evaluation of Dredged Material Proposed for Disposal at Island, Nearshore, or Upland Confined Disposal Facilities - Testing Manual (http://yosemite.epa.gov/r10/cleanup.nsf/0/fa0745084bfae55688256e5d000a382f/$FILE/trel03-1.pdf.
- If however, the dredged material is to be used beneficially, as EPA recommends, EPA strongly recommends using the following guidance: Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. - Testing Manual http://water.epa.gov/type/oceb/oceandumping/dredgedmaterial/upload/2009_10_09_oceans_regulatory_dumpdredged_itm_feb 1998.pdf.

EPA Comment 8 - In addition to providing sediment contaminant data, EPA recommends the applicant determine whether water quality criteria would be expected to be met at the discharge from the DMPA, as described in the Upland Testing Manual. Depending on the approach taken, this can range from simple comparison of elutriate sample results to water quality criteria, to simple calculations, or more complex modeling. Note also that since the applicant has proposed several alternative placement areas, this will require the applicant to demonstrate that water quality criteria will be met at the discharge from all of them. This could be simplified by proposing a single DMPA.

(2) Federally Recognized Native American Tribes and Affiliated Groups.

No response was received from any federally recognized Native American Tribes and/or affiliated groups.

(3) State and Local Agencies.

The TPWD responded by letter, dated 19 September 2014, stating:

TPWD Comment 1 - Numerous aquatic species including marine mammals, sea turtles, and fishes are attracted to the Inner Harbor for thermal refuge and adjacent shallow water forage habitat. Texas is an important year round foraging ground for juvenile and subadult green sea turtles *(Chelonia mydas;* Anderson, Shaver, and Karel 2013), a state and federally listed threatened species. Sea turtles foraging or resting in shallow waters within the vicinity of the project area may become cold-stunned and more vulnerable to construction and operation activities during cold weather events. 35 cold

stunned sea turtles were rescued from Corpus Christi Bay during a freeze event in 2010 and 655 were rescued from the adjacent upper Laguna Madre the following year.

In addition, Fertl et al. (2005) wrote that reports of the state and federally endangered West Indian manatee (*Trichechus manatus)* occurring in the Gulf of Mexico west of Florida had increased over the decade since 1995. Manatees are reported most often in estuarine habitats, usually near a freshwater source or warm-water discharges during winter months. Manatees have been documented in the Tule Lake Channel, Corpus Christi Ship Channel, La Quinta Channel, and adjacent bays (Fertl et al. 2005, TMMSN 2008).

> TPWD Recommendation: The applicant should develop a fish and wildlife conservation plan to avoid and minimize impacts to sea turtles and manatees during construction and operation activities. This plan should include a training program that includes identification sheets with photographs and telephone numbers to report distressed and/or cold stunned animals to the proper authorities. TPWD requests the opportunity to review and comment on the conservation plan.

The Texas State Historic Preservation Officer responded by letter, dated 26 September 2014, concurring that no survey is required and that the project may proceed.

The Texas Coastal Coordination Council (CCC) / Texas General Land Office (GLO) responded by letter, dated 22 December 2014, stating that it has been determined that there are no significant unresolved consistency issues with respect to the project; therefore, the project is consistent with the CMP goals and policies.

The TCEQ issued a Section 401 Water Quality Certification by letter, dated 29 September 2014 for the return water from the DMPA. The Corps will issue a NWP 16 authorizing that discharge.

(4) Individual and Organized Groups. No response was received from any individual or organized group.

d. Applicant's Response to Comments. The comment letters received during the public notice comment period were forwarded to the applicant by letter dated 10 October 2014. The applicant responded to the comments by letter, dated 30 October 2014, stating:

Response to FWS Comments:

Applicant Response 1 – (For FWS Comment 1) The onsite manager for Texas Fuel &

Asphalt has been sent a memorandum together with photographs of the West Indies Manatee. He has been instructed to report any sightings of the manatee to the U.S. Fish & Wildlife and the Texas Parks & Wildlife. Furthermore, he has been instructed to not feed or water the animal.

Response to EPA comments:

Applicant Response 1 – (For EPA Comment 1) Section 401 of the Clean Water Act through Section 404 of this Act: Texas Fuel & Asphalt has received approval from the Texas Council of Environmental Quality (TCEQ). This approval is based on the effluent at the DMPA being within 300 mil g.

Applicant Response 2 – (For EPA Comment 2) Purpose of the Project: The facility will be used to store liquid products and provide water transportation for such products.

Applicant Response 3 – (For EPA Comment 3) Alternative Analysis: An alternative analysis was conducted. A copy of the TCEQ Tier II Alternative Analysis Questionnaire and Checklist were provided to the CCRFO. (Note: This project is being reviewed under Section 10 only. The environmental analysis of this project does not require alternatives; therefore the alternatives provided by the applicant will not be included with this statement of findings).

Applicant Response 4 – (for EPA Comment 4) Beneficial Use of Dredged Material: We have studied this option and have found that there is no land available in the surrounding area to place the material for habitat restoration or habitat creation.

Applicant Response 5 – (For EPA Comments 5, 6, 7 and 8) Contaminant Testing: Contaminant testing of the area to be dredged will be tested in accordance with the U.S. Corps of Engineers, Galveston District document labeled "Sampling & Analysis Plan-Private Dredging Application" (April 2014), such plan will be submitted to the U.S. Corps of Engineers for approval prior to beginning any work. The testing work will be contracted to a qualified contractor and the results will be sent in a separate mailing. The applicant had discussions with representatives of the Port of Corpus Christi and had requested that DMPA South Shore, Cell "C" be made available to us in early 2015, pending approval from the US Corps of Engineers and Port of Corpus Christi.

Response to TPWD comments:

Applicant Response 1 – (For all TPWD comments and recommendations) The onsite manager for Texas Fuel & Asphalt has been sent a memorandum together with photographs of the sea turtles and manatees that may be in these waters and that he is

to report any distressed and/or cold stunned animals to the Texas Parks & Wildlife.

e. Corps's Consideration of Substantive Comments.

The Corps has considered all substantial comments received during this evaluation and determined that the applicant has adequately addressed all substantial concerns, to include any issues regarding the potential presence of manatees or various turtle species during dredging and construction activities. In response to EPA Comment 3, this project is being reviewed under Section 10 only. The environmental analysis of this project does not require alternatives; therefore the alternatives provided by the applicant will not be included with this statement of findings. The Corps will include Real Estate (RE) Division's statement in the permit letter:

> This permit does not authorize any injury or interference with any Federal property; nor does it grant property rights, access privileges, or rights-of-way entrance authorizations to any property including those owned by State or Federal agencies. There are Federal properties (owned or controlled by Corps of Engineers) identified within the project area. All appropriate accesses, authorizations, rights-of-way on the Corps Federal project area must be procured from the Corps Real Estate Division prior to impacting any of these Federally-owned/operated lands. This Permit authorization is limited to those impacts exactly as depicted. If property access and/or use is denied and/or requires modification to the project as permitted, this authorization becomes null and void and would require a new authorization to adequately address these new impacts. Please visit the USACE Galveston District's website for the most current information regarding the District's outgrant policy at http://www.swg.usace.army.mil/BusinessWithUs/RealEstateDivision/Outgrants.aspx.

11. Compensation and Other Mitigation Actions.

a. Compensatory Mitigation.

(1) Is compensatory mitigation required? ☐ yes ☒ no [*If "no," do not complete the rest of this section*]

(2) Is the impact in the service area of an approved mitigation bank?
☐ yes ☐ no

(i) Does the mitigation bank have appropriate number and resource type of credits available? ☐ yes ☐ no

(3) Is the impact in the service area of an approved in-lieu fee program?
☐ yes ☐ no

(i) Does the in-lieu fee program have appropriate number and resource type of credits available? ☐ yes ☐ no

(4) Check the selected compensatory mitigation option(s):
☐ mitigation bank credits
☐ in-lieu fee program credits
☐ permittee-responsible mitigation under a watershed approach
☐ permittee-responsible mitigation, on-site and in-kind
☐ permittee-responsible mitigation, off-site and out-of-kind

(5) If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project): N/A

(6) Other Mitigation Actions. N/A

12. Determinations.

a. Public Hearing. No request to hold a public hearing for the proposed project was received during the public interest review.

b. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed project has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined the activities proposed under this permit will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR PART 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons, a conformity determination is not required for this individual permit.

c. Relevant Presidential Executive Orders.

(1) EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians. Through our coordination with the federally recognized Native American Tribes, affiliated groups, and Corps staff archaeologist we have determined that this

action has no substantial direct effect on one or more Indian Tribes.

(2) EO 11988, Floodplain Management. The proposed project is minor and will not have long and/or short-term adverse impacts associated with the occupancy and modification of floodplains.

(3) EO 12898, Environmental Justice. In accordance with Title III of the Civil Right Act of 1964 and EO 12898, it has been determined that the project would not directly or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin nor would it have a disproportionate effect on minority or low-income communities.

(4) EO 13112, Invasive Species. There are no invasive species issues involved.

(5) EO 13212 and 13302, Energy Supply and Availability. The review of the proposed project was expedited and other actions were taken to the extent permitted by law and regulation to accelerate completion of this energy-related project while maintaining safety, public health, and environmental protections.

d. The following Special Conditions will be Added to the Authorization:

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. When structures or work authorized by this permit are determined by the District Engineer to have become abandoned, obstructive to navigation or cease to be used for the purpose for which they were permitted, such structures or other work must be removed, the area cleared of all obstructions, and written notice given to the Corps of Engineers, Galveston District, Regulatory Division, Corpus Christi Field Office (Corps), within 30 days of completion.

3. The permittee must install and maintain, at their own expense, any safety lights and signals prescribed by the United States Coast Guard (USCG) through regulations or otherwise on the authorized facilities. In addition, no bright lights that may be erected on the permitted structure shall be directed toward a navigable waterway in a manner that could hinder nighttime users of this waterway. The USCG may be reached at the following address: Commander (dpb), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or by telephone at 504-589-6198.

The above special condition(s) are required for fulfillment of the public interest requirements specified according to 33 CFR 320.4(o)(3): Navigation.

4. The permittee is required to obtain a Corps of Engineers (Corps) Galveston District Real Estate Out Grant prior to utilizing the CE dredged material placement areas.

5. The permittee must coordinate the use of Dredged Material Placement Area(s) with the Corps of Engineers Galveston District's Southern Area Office, the Navigation Branch and the Operations Division, at least 60 days prior to conducting any and all work in or affecting the disposal area(s) to assure that the work will not conflict with U. S. Government dredging or disposal area management activities.

The above special conditions are required for fulfillment of the public interest requirements specified according to 33 CFR 320.4(g) Consideration of property ownership.

Rationale: In accordance with 33 CFR 325.4 Conditioning of permits, the district engineer will add special conditions to Department of Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirements.

e. Findings of No Significant Impact. There have been no significant environmental effects identified resulting from the proposed work. The impact of this proposed activity on aspects affecting the quality of the human environment has been evaluated and it is determined that this action does not require an Environmental Impact Statement.

f. Public Interest. We find that issuance of a Department of the Army permit is not contrary to the public interest.

PERMIT APPLICATION – SWG-2014-00559
SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the Above – Numbered Permit Application

FOR THE COMMANDER:

PREPARED BY:

Date: 23 Dec 14

MATTHEW KIMMEL
Regulatory Project Manager

REVIEWED/APPROVED BY:

Date: 23 Dec 14

NICHOLAS LASKOWSKI
Supervisor, Corpus Christi Regulatory Field Office
Regulatory Division, Galveston District